



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 29, 1998

Mr. Eric M. Bost
Commissioner
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR98-1347

Dear Mr. Bost:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116131.

The Texas Department of Human Services (the "department") received a request for "all written and telephonic complaints against [the requestor] made by Donald Liles and Mr. & Mrs. Gray Bennion," and "all written documentation pertaining to the investigation concerning a sexual harassment/criminal [sic] assault complaint against Roy Lopez." You contend that some information in the department's investigation file on the sexual harassment complaint is excepted from disclosure pursuant to a common-law right of privacy under section 552.101 of the Government Code. We assume that you have released to the requestor any information pertaining to Donald Liles' and the Bennions' complaints against the requestor. We have considered the exception you claim and reviewed the documents submitted for our review.

The department states, and we agree, that it has not sought an open records decision from this office within the statutory ten-day deadline. *See* Gov't Code § 552.301. The department's delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The applicability of section 552.101 provides such a compelling reason.

Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including the common-law right to privacy. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable

person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. Although information relating to an internal investigation of sexual harassment claims involving public employees may be highly intimate or embarrassing, the public generally has a legitimate interest in knowing the details of such an investigation. Open Records Decision No. 444 (1986).

In *Morales v. Ellen*, 840 S.W.2d 519, 525 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and a summary of the board of inquiry that conducted the investigation. *Id.* The court ordered the release of the affidavit of the person under investigation and the summary of the investigation, stating that the public's interest was sufficiently served by the disclosure of these documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

Pursuant to *Ellen*, the identities of the victims and witnesses to the reported incidents of sexual harassment are protected by the common-law privacy doctrine and must be withheld. *Id.* However, in this situation, information that relates to the requestor, who is one of the alleged victims, may not be withheld from her on the basis of protecting her own privacy interests. See Gov't Code § 552.023(a). Accordingly, although identifying information about the requestor should not be redacted, identifying information about other victims and witnesses to the alleged sexual harassment must be withheld from disclosure.¹ We have reviewed the records and marked the information that must be withheld and the portions that you must release.

The documents that must be released contain the home addresses, telephone numbers, and social security numbers of current or former employees of the department. It is possible that this information may be confidential under section 552.117 of the Government Code, and therefore, depending on the specific circumstances, may not be released. Section 552.117 excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or personal family members information of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold this information if a current or former employee or official requested that this information be kept confidential under section 552.024. See Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information of a current or former employee who made the request for confidentiality under

¹Here, the requestor has a special right of access to information that relates to herself. Gov't Code § 552.023. We caution, however, that some of the information may be confidential by law or may implicate the privacy interest of a third party. Therefore, if the department receives a request in the future, the department should seek a ruling from this office and reassert its privacy exception before releasing any of the requested information. See Gov't Code § 552.352 (distribution of confidential information may constitute criminal offense).

section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5.

Lastly, the Seventy-fifth Legislature added section 552.130 to the Open Records Act which governs the release and use of information obtained from motor vehicle records. Section 552.130 provides in relevant part as follows:

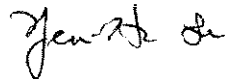
(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

We have marked the information you must withhold pursuant to section 552.130.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

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Ref.: ID# 116131

Enclosures: Marked documents